



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230505-0123]

RIN 0648-BM18

Pacific Halibut Fisheries; Catch Sharing Plan; Rulemaking to Modify the 2023-2027

Halibut Individual Fishing Quota (IFQ) Vessel Harvest Limitations in IFQ

Regulatory Areas 4A, 4B, 4C, and 4D

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to revise regulations for the commercial individual fishing quota (IFQ) Pacific halibut (halibut) fisheries for 2023 through 2027.

This proposed rule would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps, in IFQ Regulatory Areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action is needed to continue to provide additional flexibility and stability to IFQ participants in Areas 4A, 4B, 4C, and 4D while a longer term modification of vessel use caps is considered. This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

DATES: Submit comments on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by FDMS

Docket number NOAA-NMFS-2023-0055, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0055 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) (herein referred to as the “Analysis”) prepared for this action are available from www.regulations.gov or from the NMFS Alaska Region Web site at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Alicia M. Miller, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

The International Pacific Halibut Commission (IPHC) promulgates regulations governing the North Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific

Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce. NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The 2023 IPHC annual management measures published on March 7, 2023 (88 FR 14066).

The Halibut Act, 16 U.S.C. 773c(a)-(b), provides the Secretary of Commerce with general responsibility for carrying out the Convention and the Halibut Act, including the authority to adopt regulations necessary to carry out the purposes and objectives of the Convention. The Halibut Act, 16 U.S.C. 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, IPHC regulations. Regulations the Council recommends may be implemented by NMFS only after approval by the Secretary of Commerce.

The Council has exercised its authority to develop halibut management programs for the subsistence, sport, and commercial halibut fisheries. The Secretary of Commerce exercised authority to implement the commercial IFQ halibut fishery management program, also known as "the IFQ Program" (58 FR 59375, November 9, 1993). The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679.

The halibut IFQ fishery is managed in specific areas defined by the IPHC. These IFQ regulatory areas are: Area 2A (California, Oregon, and Washington); Area 2B (British Columbia); Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five Areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). These Areas are described in Figure 15 to 50 CFR part 679. The halibut IFQ fishery is limited to persons holding quota share (QS). There are also limits – commonly known as "vessel use caps" – on how much

halibut IFQ a vessel may harvest each year in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E. Throughout this preamble, the term vessel use cap refers to regulations applicable to the halibut IFQ fishery (section 679.42(h)(1)).

As relevant to this action, a Community Quota Entity (CQE) is authorized to hold halibut QS in Area 4B. Halibut IFQ derived from QS held by a CQE is subject to vessel use caps (section 679.42(h)(1)(ii)). NMFS also allocates halibut to the Western Alaska Community Development Quota (CDQ Program) in Areas 4B, 4C, 4D, and 4E (section 679.31(a)(2)), but those allocations are not subject to a vessel use cap and are not affected by this rulemaking.

Background

This proposed rule would implement regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D for 2023 through 2027. Vessel use caps were recommended by the Council and implemented by NMFS as part of the IFQ Program (58 FR 59375, November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)). The following sections describe the IFQ Program; halibut IFQ vessel use caps; the rationale and effects of temporarily removing vessel use caps in Areas 4A, 4B, 4C, and 4D; and the regulations that would be implemented under this proposed rule.

IFQ Program

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.3 of the Analysis. Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding QS, which is the limited access permit NMFS uses to calculate a person's IFQ each year. Halibut QS is designated for a specific geographic area of harvest, a specific vessel operation type (catcher vessel (C/V) or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, category A shares are designated for catcher/processors that process their catch at sea (*e.g.*, freezer longline vessels) and do not have a vessel length designation, whereas category B, category C, and category D shares are designated to be fished on C/Vs that meet specific length designations (section 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. IFQ permits authorize permit holders to harvest a specified amount of a particular IFQ species in an area from a specific operation type and vessel category, consistent with the QS they hold. IFQ is expressed in pounds (lb) and is based on the amount of QS held by the permit holder in relation to the total QS pool for each area with an assigned catch.

The IFQ Program also establishes: 1) limits on the maximum amount of QS that a person could use (*i.e.*, be used to receive annual IFQ) (section 679.42(f)); 2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (section 679.42(g)); 3) limits on the ability of IFQ assigned to one C/V vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (section 679.42(a)(2)); and 4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (section 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold C/V QS, and they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (section 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the C/V halibut IFQ fisheries, limit

consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

Halibut IFQ Vessel Use Caps

The IFQ Program vessel use caps limit the maximum amount of halibut that can be harvested on any one vessel. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut IFQ fishery and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130, December 3, 1992).

This proposed rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in pounds (lb) and metric tons (mt). Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed.

Relevant to this proposed rule, for Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, vessels cannot be used to harvest more halibut IFQ than one-half percent of the combined total catch limits of halibut (section 679.42(h)(1)). Applying this regulation to 2023 yields a vessel use cap of 89,030 lb (40.4 mt). This vessel use cap applies to vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, 4D, and 4E. Notably, however, halibut harvested in Area 4E is currently entirely allocated under the CDQ Program and CDQ is not subject to vessel use caps. For that reason, Area 4E is not included in this proposed rule.

Applicable to Area 4B for this proposed action, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870, February 14, 2014). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold C/V halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ

derived from the underlying QS. Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is subject to the vessel use cap regulations at § 679.42(h)(1)(ii), which limit a vessel to harvest no more than 50,000 lb (22.7 mt), in addition to those set forth at § 679.42(h)(1) introductory text and § 679.42(h)(i).

Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4A, 4B, 4C, and 4D

At its February 2023 meeting, the Council reviewed an analysis of proposed regulatory changes to remove vessel use caps applicable to the halibut IFQ fisheries in Areas 4A, 4B, 4C, and 4D from 2023 through 2027 (Sections 1 and 2.2.3 of the Analysis). The Council requested this proposed rule to provide continued temporary flexibility to IFQ participants in IPHC Area 4 while the Council analyzes longer term adjustments to vessel use through the Council and public review process. The Council's selection of 2027 as the sunset date for this exemption does not signal any shift from the Council's intent to move the longer-term action through the Council process as efficiently as possible, but rather to provide enough time to develop and implement the longer-term solution and to minimize the likelihood that there is a gap between this temporary exemption and a subsequent permanent action.

NMFS proposes this rule to provide flexibility to vessels operating in Area 4 between 2023 and through 2027. This action is expected to facilitate the harvest of halibut allocated under the IFQ program in Area 4 and provide harvest flexibility and stability to vessels operating in Area 4. This action is needed because a relatively large proportion of vessels participating in Areas 4A, 4B, 4C, and 4D halibut IFQ fisheries are operating near the current vessel use cap, thereby limiting the amount of additional IFQ that could be harvested on vessels operating in those areas (Section 2.2.3 of the Analysis). Additionally, this action is expected to provide flexibility to the CQE

representing the community of Adak, Alaska, because the minimum number of vessels needed under current use caps exceeds the number of vessels owned by residents of the community (Section 2.3.1.3 of the Analysis). Vessel use cap limits are a core component of the IFQ Program that are designed to prevent consolidation and help protect entry level opportunities. As such, the Council expressed concerns about vessel operators becoming reliant on the flexibility provided by this action and intends to develop a more tailored, longer-term solution, that will provide a better balance between the intent of vessel use cap provision and the evolving circumstances in Area 4A, 4B, 4C, and 4D.

Sections 2.2.3 and 2.4 of the Analysis provide details on the efficacy of the rulemakings in 2020, 2021, and 2022 that temporarily removed vessel use caps in Area 4. The Analysis also includes a broader discussion of the range of factors considered for this proposed rule and the anticipated effects of removing the vessel use caps in Areas 4A, 4B, 4C, and 4D, for both CQE and non-CQE-associated vessels for the 2023 to 2027 fishing years. IFQ halibut harvested in Area 4 has declined in recent years, particularly in Area 4B. Compounding circumstances, including a decline in active processors, longer distances to travel to deliver to a processor, and high operating costs, have likely contributed to fewer vessels participating in Area 4 fisheries. Information provided to the Council from stakeholders also emphasized that the decline in crab stocks has impacted the viability of local processing markets in Area 4 and that this temporary measure will help to improve and incentivize local access to the fishery and provide stability for fishermen in the near term. Additionally, the Council previously initiated a longer-term action in June 2022 to make more measured changes to halibut vessel use caps in Area 4; however, the Council recognized that action will take time to move through the Council and public review process and that flexibility is needed more immediately to provide additional stability to halibut IFQ participants in the interim.

The Council did not recommend, and this proposed rule does not include, measures to relieve the vessel use caps for the sablefish IFQ fishery, or for other halibut IFQ areas, due to the larger number of vessels that are currently active in the sablefish IFQ fishery and these other halibut areas. As noted above, Area 4E was not included because halibut harvested in Area 4E is entirely allocated under the CDQ Program; therefore, vessel use caps are not constraining and not included in this action. Detailed information indicating that halibut harvests in other IFQ areas would not be constrained under the current vessel use caps is available in Section 2.3.1.4 of the Analysis.

The proposed regulatory amendments in this rule would add a regulation that would temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D in the 2023 through 2027 fishing years. This proposed rule would provide flexibility to facilitate harvest of the halibut resource and is responsive to the Council request to implement this action beginning in the 2023 fishing year.

This proposed rule would not modify other elements of the IFQ Program. Specifically, this proposed rule would not—

- Increase or otherwise modify the annual halibut catch limits adopted by the IPHC and implemented by NMFS (88 FR 14066, March 7, 2023);
- Modify any other conservation measures recommended by the IPHC and implemented by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC; or
- Modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

Proposed Regulations

This proposed rule would add a provision at § 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D from 2023 through 2027 fishing years. Because vessel use caps are applied under existing

regulations at the fishery level, including harvest in all areas, the proposed regulations clarify that harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in Areas 2C, 3A, or 3B from 2023 through 2027.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation and catch of halibut in the United States portion of Convention waters provided those regulations do not conflict with IPHC regulations. This proposed action is consistent with the Council's authority to allocate halibut catch among fishery participants in Convention waters off Alaska.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the number and

description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (North American Industry Classification System code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate the owners and operators of vessels that harvest halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. As of 2021 (the most recent year of gross revenue data), there were 98 unique vessels that harvested halibut IFQ in Areas 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but one of these vessels that landed halibut in 2021 are considered small entities based on the applicable \$11 million threshold. Additional details are included in Sections 2.6 in the Analysis prepared for this proposed rule (see **ADDRESSES**).

Impacts of this Action on Small Entities

This action, if adopted, could better facilitate harvest of IFQ in Area 4 during the 2023 through 2027 fishing seasons. Although it is difficult to discern the entire scope of impact of the regulatory exemptions implemented for the 2020-2022 fishing seasons, harvest rates achieved in 2020-2022 relative to prior years (2006-2019) indicate the regulatory flexibilities implemented in 2020, 2021, and 2022 (both the temporary transfer

provisions as well the vessel use cap exemptions) had some positive impact on the harvest rates, as described in Section 2.4.2 of the Analysis (See **ADDRESSES**).

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The Council considered one action alternative. No other alternatives were considered. This action is the same as the action implemented 2022 and 2021 and similar to the action implemented in 2020, which did not include Area 4A.

The status quo alternative would retain the existing vessel use cap restrictions as defined under § 679.42(h). It is possible that existing vessel use caps regulations under the status quo may increase the likelihood that some of the annual halibut allocation is left unharvested in Area 4.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory Areas 4A, 4B, 4C, and 4D. The action alternative and the regulations proposed by this action, if adopted, would provide flexibility to IFQ participants in 2023 through 2027 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these Areas. However, this proposed action could result in a reduction in existing operating vessels (and the associated crew jobs) and opportunities for new entrants in Areas 4A, 4B, 4C, and 4D, due to inability to compete with larger, more efficient, operations that are unconstrained by vessel limitations. Additionally, if there are fewer participants in the fishery, it is possible that landings could consolidate to fewer processors and communities depending on landing location and historic harvester-processor relationships.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

Collection-of-Information Requirements

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and Recordkeeping Requirements.

Dated: May 8, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF
ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(h) * * *

(1) * * *

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory Areas 4A, 4B, 4C, and 4D during the 2023 through 2027 fishing years. IFQ halibut harvested in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory Areas 2C, 3A, or 3B during the 2023 through 2027 fishing years.

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[FR Doc. 2023-10092 Filed: 5/10/2023 8:45 am; Publication Date: 5/11/2023]